

2001 DRAFTING REQUEST**Bill**Received: **09/21/2001**Received By: **rryan**Wanted: **As time permits**

Identical to LRB:

For: **Robert Welch (608) 266-0751**By/Representing: **Chris**This file may be shown to any legislator: **NO**Drafter: **rryan**May Contact: **Reps. Zien and Friske**

Addl. Drafters:

Subject: **Criminal Law - guns and weapons**
Criminal Law - law enforcement
Criminal Law - miscellaneous
Criminal Law - sentencing

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Crimes related to terrorism; death penalty for first-degree homicide committed with intent to terrorize;
 permit retired law enforcement personnel to obtain license for carrying a concealed weapon

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 10/26/2001	gilfokm 10/26/2001					S&L
/P1			pgreensl 10/29/2001				S&L
/1	rryan 10/31/2001	gilfokm 10/31/2001	jfrantze 11/01/2001		lrb_docadmin 11/01/2001		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jackcted</u>	<u>Required</u>
	rryan 11/02/2001 mdsida 11/02/2001	gilfokm 11/02/2001		_____ _____ _____ _____			
/2		gilfokm 11/05/2001	jfrantze 11/05/2001	_____ _____			S&L
/3			jfrantze 11/05/2001	_____ _____	lrb_docadmin 11/05/2001	lrb_docadmin 11/06/2001	

FE Sent For: *At intro*

<END>

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	rryan	gilfokm		_____			
	11/02/2001	11/02/2001		_____			
	mdsida			_____			
	11/02/2001			_____			

/2		gilfokm	jfrantze	_____			S&L
		11/05/2001	11/05/2001	_____			

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			11/05/2001	_____	11/05/2001		

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KMC
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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

11/5 *Self*
11/5
<END>

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Drafter: rryan

May Contact: Reps. Zien and Friske

Addl. Drafters: mdsida

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1?	rryan	10/1-10/26 Kmg	10/28 P8	10/29 P8/RB			
FE Sent For:		1-10/31 Kmg					

<END>

Community Protection Act Drafting Instructions:

- The Bill should be named the "Community Protection Act"
- Criminal provisions regarding terrorism as submitted by Senator Welch
- Concealed Weapons:
 - o Allowing concealed weapons to be carried by:
 - Retired Law enforcement (including local, state, federal and military police)
 - Active military, reservists and national guard members serving off duty or on duty with the permission of their command authority.
 - State law enforcement, including Troopers, Wardens, Correctional Officers and DOJ Officers.
 - Licensed private security.
 - o The intent is to allow any of the above individuals who have received weapons training as a mandatory part of their employment to receive a license upon passing a standard federal and state criminal background check.
 - o Time requirements on issuance contained LRB 1086 by Zien and Gunderson should be included.
 - o Application and background checks would be through county sheriff.
 - o Sheriff would be required to certify the individual upon receiving proof that he or she meets the above requirements. The sheriff would certify to the DMV that a license could be issued. DMV would issue a photo ID designed and issued under the requirements of LRB 1086.
 - o DOJ would be required to maintain a computer list of the individuals as stipulated in LRB 1086.
 - o Individuals could be charged only for the actual cost of the standard background check.
 - o Applicants would be required to carry the license whenever they carry the concealed weapon.
 - o Carry would be allowed wherever local law enforcement officers are allowed to carry.

Please give me a call regarding any questions at 6-7511.

FOR IMMEDIATE RELEASE:

June 14, 2001

GOVERNOR PATAKI PROPOSES "ANTI-TERRORISM ACT OF 2001"

Comprehensive Package Would Impose Severe New Penalties To Help Combat Terrorists

Governor George E. Pataki today announced a multi-faceted anti-terrorism initiative that includes the "Anti-Terrorism Act of 2001" a comprehensive legislative package that would establish six new penal law offenses for persons who commit terrorist acts, make terrorist threats, solicit or provide material support for terrorist acts, and hinder the prosecution of terrorists.

The Governor's anti-terrorism initiative also includes the creation of a new Governor's Commission on Terrorism, the convening of a Cybercrime/Cyber-Terrorism summit, planned for this fall in New York City, and an amendment to the death penalty law to make a person who commits murder in furtherance of a terrorist act eligible for the death penalty.

"Terrorism is a cowardly and despicable crime," Governor Pataki said. "From the World Trade Center bombing, to the ruthless murder of Dr. Barnett Slepian, to the attack on a van carrying Hasidic students on the Brooklyn Bridge that took the life of Ari Halberstam, New York has witnessed the horrible effects of terrorism and we will not tolerate it."

"This legislation will send a loud and clear message to potential terrorists that New Yorkers will not be intimidated and we have every intention of fighting back," the Governor said. "This comprehensive bill coupled with our new Commission on Terrorism will provide the legal and strategic weapons we need to help save lives and prevent future tragedies from occurring."

Horrible acts of terrorism, such as the bombing of the federal building in Oklahoma City, underscore the compelling need to bring terrorists to justice and hold them accountable for their atrocious acts. The multi-faceted initiative announced by the Governor will enable New York to combat terrorism through new and increased criminal penalties, the development of mechanisms to deny sanctuary and financial support for terrorists, and enhanced cooperation with other jurisdictions to ensure New York does not become a safe haven or launching point for terrorists acts.

Devorah Halberstam, who will be a member of the Governor's Commission on Terrorism, said, "Terrorists can strike at any time, anywhere. The horror of a violent terrorist act is the indiscriminate loss of innocent human lives, the pain and suffering caused to victims and families, and the eternal question: why? I am proud to be a member of the Governor's Commission on Terrorism, and will work diligently to make New York safer for everybody."

Lieutenant Governor Mary O. Donohue, said, "Terrorism of any kind tears at the fabric of our society and should not, and will not, be tolerated. This legislation will provide a zero tolerance approach toward those who threaten the lives of all New Yorkers."

State Senator Roy Goodman said, "This tough, muscular legislation sends the strongest message possible that our society will not tolerate dastardly acts of terrorism. Those who are considering perpetuating such acts do so at their peril."

p. Sherwood Boehlert said, "Governor Pataki is again showing his strong leadership by taking on the serious problem of computer crime. Together we have been working with the Department of Justice, the National Institute of Justice, the Department of Defense, several Intelligence agencies, along with our local and state law enforcement agencies and our excellent universities and colleges to address the growing problem of cybercrime. We are finding that right here in New York, we have among the most effective public-private partnerships in advancing solutions to electronic crimes. The Governor's summit will only further our progress."

Katherine N. Lapp, Director of Criminal Justice, said, "This legislation will make New York State a national leader in the battle against terrorism. It's another example of Governor Pataki's vision and leadership in criminal justice policy and his determination to continue New York's status as the safest big state in the country."

The six new Penal Law offenses created by the bill are:

① **Crime of terrorism.** A person is guilty of this offense when he or she commits a "specified offense" with intent to accomplish one of the following three goals: 1) intimidate or coerce a civilian population, 2) influence the policy of a unit of government, or 3) affect the conduct of a unit of government.

A "specified offense" is any class A felony (other than a drug offense), any violent felony offense, manslaughter in the second degree, criminal tampering in the first degree, or an attempt or conspiracy to commit any of the specified offenses.

If the specified offense is a class B, C, D or E felony the punishment shall be one category higher. For example, a person who commits Assault in the first degree, a class B violent felony (punishable by up to 25 years in state prison) with the intent to intimidate or coerce a civilian population will be subject to a class A-I felony sentence (punishable by up to life in state prison.) If the underlying specified offense is itself a class A-I felony offense, then the minimum punishment must be life imprisonment without parole. If the specified offense is murder in the first degree, a sentence of death is authorized.

② **Making a terrorist threat.** A person is guilty of this offense when he or she threatens to commit a Crime of Terrorism (see #1 above) and thereby causes a reasonable expectation or fear of the imminent commission of such offense. This offense is punishable as a class D violent felony, with a sentence of up to 7 years in state prison.

③ **Soliciting or providing support for an act of terrorism in the first degree.** A person is guilty of this offense when he or she solicits or provides material support or resources in New York, with a value in excess of \$1,000, and intends that such will be used in any phase of committing, concealing, or escaping from an act of terrorism, regardless of where the act of terrorism was committed or intended to be committed. This offense is punishable as a class C violent felony offense, with a sentence of up to 15 years in state prison.

④ **Soliciting or providing support for an act of terrorism in the second degree.** This offense covers the same pernicious activities as the second degree offense (see # 3 above), without regard to the value of the material support or resources. This offense is punishable as a class D violent felony offense, with a sentence of up to 7 years in state prison.

⑤ **Hindering prosecution of terrorism in the first degree.** A person is guilty of this offense when he or she renders criminal assistance to a person who has committed an act of terrorism that resulted in death, knowing or believing that the person has engaged in such conduct. A person "renders criminal assistance" when he or she harbors or conceals a terrorist, provides a terrorist with money, transportation or a weapon, or suppresses physical evidence, among other types of assistance. This offense is punishable as a class B violent felony offense, with a sentence of up to 25 years in state prison.

↓ duplication?

This offense covers the same activities as the second degree offense (see # 5 above), without regard to whether the act of terrorism resulted in the death of another person. This offense is punishable as a class C violent felony offense, with a sentence of up to 15 years in state prison.

"The New York State Police stand ready to bring all who commit barbaric acts of terrorism to justice," said State Police Superintendent James W. McMahon. "Ensuring the physical safety of our citizens is the fundamental responsibility of law enforcement and I applaud Governor Pataki for this aggressive legislation. We will continue to work cooperatively with local, state and federal law enforcement agencies to address the threat of terrorism within New York State."

Revision to the Death Penalty Statute

The bill would also amend the death penalty statute to make a person who intentionally murders another person in furtherance of an act of terrorism eligible for the death penalty. Under current law, the commission of such a heinous murder is not a sufficient basis for the death penalty. Rather, a terrorist act of murder is merely a factor that might be considered during the sentencing phase of a death penalty case, and only then when the commission of the murder subjects the defendant to the death penalty for an independent reason (e.g., the victim was a police officer or a witness, or the defendant intentionally killed two or more persons).

The cowardly and ruthless murder of Dr. Barnett Slepian in Amherst, New York illustrates the importance of the Governor's proposed amendment. Under current law, in cases involving the intentional murder of a single individual, the death penalty can be imposed only under specified circumstances: such as when the victim was a police officer, the killing was committed either to silence a witness, further the commission of another serious felony or obtain financial gain, and when the killing involved torture. Only if one of these criteria is satisfied does the commission of the murder for a terrorist purpose become relevant as an aggravating factor for the jury's consideration. In the absence of one of these criteria the death penalty cannot be imposed, even if the murder was committed for a terrorist purpose, such as to influence the willingness of doctors to provide reproductive services.

Governor's Commission on Terrorism

As part of his aggressive anti-terrorism policy, Governor Pataki has also signed an Executive Order establishing the Governor's Commission on Terrorism. The Commission will be comprised of 15 members, and co-chaired by the Director of State Operations, James Natoli, and the Director of Criminal Justice, Katherine Lapp.

It is empowered to do the following:

- Determine the nature and extent of terrorism, terrorist groups and support for terrorist groups in New York State;
- Monitor trends in terrorism nationally and internationally and identify the implications of those trends for New York State;
- Review the adequacy of the laws in New York State for responding to terrorism and provide recommendations to strengthen the laws;
- Assess the adequacy of New York State's capacity to prevent terrorism, whether targeted at the population-at-large, individuals or the State's infrastructure - through weapons of mass

destruction, conventional weaponry or through cyber-terrorism; and,

Review the State's first responder plans for terrorist incidents and attacks.

The Commission will submit a report to the Governor by July 2003, which assesses the State's level of preparedness for responding to the full range of possible terrorist threats.

Additional members of the Commission will include; the Superintendent of the Division of State Police; the Adjutant General of the Division of Military and Naval Affairs; the Director of the State Emergency Management Office; the Chairperson of the Office for Technology; the Commissioner of the Department of Health; a representative from the New York State Emergency Medical Association; a representative from the District Attorneys Association; a representative from the New York State Association of Chiefs of Police; a representative from the New York State Sheriff's Association; a representative from the New York City Police Department; an expert on international terrorism; an expert on domestic terrorism; and a victims' advocate.

In carrying out its powers and duties as provided in this Order, the Commission shall consult with: the Metropolitan Transit Authority; the Port Authority of New York and New Jersey; the New York City Fire Department; the New York City Office of Emergency Management; the New York State Fire Chiefs Association; the United States Attorneys; the Federal Bureau of Investigation, other federal agencies and any other persons or entities it deems appropriate or necessary.

Cybercrime/Cyber-Terrorism Summit

The Governor's Anti-Terrorism initiative also includes the convening of a Cybercrime/Cyber-Terrorism summit, which is planned for the fall of 2001 in New York City. The purpose of the summit is to bring together government leaders, law enforcement, the private sector and academia to develop strategies for fighting, preventing and investigating cybercrime, including use of the Internet for cyber-terrorism.

Terrorism Statistics:

A growing percentage of terrorist attacks are designed to kill as many people as possible. In the 1990s a terrorist incident was almost 20 percent more likely to result in death or injury than an incident two decades ago. (Source: Countering the Changing Threat of International Terrorism, Report of the National Commission on Terrorism)

Over the past five years, the level of terrorist acts committed in the United States has increased steadily. There were two known or suspected terrorist acts recorded in the United States in 1995, three in 1996, four in 1997, five in 1998, and 12 in 1999. (Source: Statement for the Record, Louis J. Freeh, Director Federal Bureau of Investigation on the Threat of Terrorism to the United States before the United States Senate Committees on Appropriations, Armed Services, and Select Committee on Intelligence, May 10, 2001)

The 12 known or suspected acts in 1999 included two separate acts committed by lone domestic extremists, eight acts attributed to animal rights and environmental extremists, one bombing incident believed carried out by separatists in Puerto Rico, and one arson incident possibly committed by animal rights extremists or anarchists in Washington State. (Source: Statement for the Record Louis J. Freeh, Director Federal Bureau of Investigation on the Threat of Terrorism to the United States before the United States Senate Committees on Appropriations, Armed Services, and Select Committee on Intelligence, May 10, 2001).

In addition to the 12 known or suspected terrorist acts in 1999, seven planned acts of terrorism were prevented in the United States during the year. (Source: Statement for the Record Louis J. Freeh, Director Federal Bureau of Investigation on the Threat of Terrorism to the United States before the United States Senate Committees on Appropriations, Armed Services, and Select Committee on Intelligence, May 10, 2001)

Three-quarters of Americans say they are concerned about terrorist attack in the United States. (Source: Public Agenda Online)

Americans are more likely to fear nuclear attack from a terrorist than from a foreign country, and most say international terrorists are a major threat. (Source: Public Agenda Online)

More than half say the United States will someday be attacked with chemical or biological weapons, but many say the government can take measures to prevent terrorist attacks. (Source: Public Agenda Online)

[Return to the Press Releases](#)
[Return to the Office of the Governor](#)

10/11/01

Amy Ferris, Welch's office

(1.) Q: NY terrorism bill enhances penalties for specified offenses
WI enhances penalties for any felony that meets certain conditions
(bodily harm or death; prop. damage > 25K; threat or use of violence or force)
which approach?

Also NY has defined intent somewhat differently

which approach?

A: Incorporate NY into WI

(2) Q: NY "solicitation" crime doesn't really solicitation - is providing support. Want to address solicitation or providing support

A: BOTH

(3) Q: under pending prosecution crime, want to prohibit giving suspect \$ for all purposes, for ex. hiring an attorney for defense?
A: Yes

(4) Q: Want to require consideration of aggravating circumstances for death penalty or just narrow who is eligible for death sentence by definition of the crime?
A: No aggravating circumstances required

Ryan, Robin

From: Newhouse, Chris
Sent: October 17, 2001 11:16 AM
To: Dsida, Michael; Seitz, Robert
Subject: Weapons of Mass Destruction

Sec. 2332a. Use of certain weapons of mass destruction

- (a) Offense Against a National of the United States or Within the United States. - A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction (other than a chemical weapon as that term is defined in section [229F <../18/229F.html>](#)), including any biological agent, toxin, or vector (as those terms are defined in section [178 <../18/178.html>](#)) -
 - (1) against a national of the United States while such national is outside of the United States;
 - (2) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce; or
 - (3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States, shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.
- (b) Offense by National of the United States Outside of the United States. - Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction (other than a chemical weapon (as that term is defined in section [229F <../18/229F.html>](#))) outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.
- (c) Definitions. - For purposes of this section -
 - (1) the term "national of the United States" has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and
 - (2) the term "weapon of mass destruction" means -
 - (A) any destructive device as defined in section [921 <../18/921.html>](#) of this title;
 - (B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;
 - (C) any weapon involving a disease organism; or
 - (D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

2001 BILL

D-Note

Regen

1 AN ACT *to renumber* 939.50 (1) (a) and 939.50 (3) (a); *to renumber and amend*
 2 940.01 (1) (b); *to amend* 301.048 (2) (am) 2., 302.11 (1), 302.114 (1), 302.114 (2),
 3 302.114 (3) (a) (intro.), 302.114 (3) (b), 302.114 (3) (c), 303.065 (1) (b), 304.02 (5),
 4 304.06 (1) (b), 304.071 (2), 939.30 (2), 939.31, 939.32 (1) (a), 939.50 (2), 939.60,
 5 939.62 (2m) (a) 2m. c., 939.62 (2m) (c), 939.624 (2), 939.625 (1) (b) 2., 939.63 (1)
 6 (a) 2., 939.632 (1) (e) 2., 940.01 (1) (a), 940.01 (2) (intro.), 948.35 (1) (b), 971.17
 7 (1), 972.03, 972.13 (6), 973.01 (3), 973.014 (1g) (a) (intro.), 973.032 (2) (b), 973.09
 8 (1) (c) and 978.07 (1) (c) 1.; and *to create* 301.046 (3) (cm), 302.11 (1w), 304.06
 9 (1t), 939.22 (7), 939.50 (1) (ag), 939.50 (3) (ag), 940.01 (1) (am), 940.01 (1) (b) 1.
 10 and 2., 961.335 (1m), 967.02 (1m), 973.0145, 973.016 and 973.017 of the
 11 statutes; relating to: providing a penalty of either death or life imprisonment

Insert Relating Clause ✓

BILL

1

2

for first-degree intentional homicide, affecting eligibility for supervised release, and granting rule-making authority

keep

Analysis by the Legislative Reference Bureau

Under current law, no state crime is punishable by a sentence of death. First degree homicide (causing the death of another human being or an unborn child with the intent to kill that human being, unborn child, or another, except in the case of a legal abortion) is a Class A felony, punishable by life imprisonment. A court imposing a life sentence has the discretion to determine whether the defendant is eligible to petition for release on extended supervision after serving 20 years in prison or after some greater specified period, or whether the person is not eligible for release to extended supervision. (No person convicted for a crime committed on or after December 31, 1999, is eligible for parole under a sentence for that crime.)

This bill provides a penalty of either death or life imprisonment for certain first degree homicides. The death penalty is applicable to a first degree intentional homicide if the victim is under age 16 or is an unborn child, the offender is at least 16 years of age at the time of the offense, and the offender is convicted for directly committing the homicide as opposed to being convicted as a party to the crime.

If a person is convicted for a crime that is punishable by death, the trial court must convene a separate sentencing proceeding. The defendant has a right to a jury at the sentencing proceeding. Generally, the trial jury will serve at the sentencing proceeding. However, if there was no trial jury or if the trial jury cannot continue to serve, a new jury is selected.

At the sentencing proceeding, the prosecution and defense present evidence of aggravating and mitigating circumstances concerning the offense or the defendant. In order for a judge to sentence a person to death, the judge must find that at least one of the following six aggravating circumstances applies to the offense or defendant:

1. The defendant was on parole or extended supervision or was confined in prison when he or she committed the offense.
2. The offense was committed for the purpose of avoiding or preventing arrest or for the purpose of effecting an escape from custody.
3. The defendant knowingly created a great risk to many persons.
4. The offense was committed to disrupt or hinder the exercise of government or the enforcement of law.
5. The defendant intentionally caused the victim bodily harm or mental anguish before the victim died.
6. The defendant enjoyed or was utterly indifferent to the victim's suffering.

The judge and jury must consider and weigh the existence of the specified aggravating circumstances against the existence of any mitigating factors such as whether the defendant acted under extreme mental or emotional duress, the defendant's capacity to appreciate the criminality of his or her conduct, whether the

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defendant has a prior criminal history, whether the victim participated in the defendant's conduct or consented to the defendant's act, and the defendant's age.

The jury makes a recommendation to the judge by majority vote as to whether the defendant should be sentenced to death or be sentenced to imprisonment for life. The jury's recommendation is only advisory. If the judge does not find that one of the six aggravating circumstances applies, the judge must sentence the defendant to life imprisonment and make a determination as to whether and when the defendant is eligible to petition for release to extended supervision. If the judge does find that an aggravating circumstance applies, the judge must weigh the aggravating and mitigating circumstances and sentence the person either to death or to life imprisonment. If the judge imposes a death sentence, the judge must specify on the record his or her findings with regard to the existence of aggravating and mitigating circumstances. Any death sentence is subject to automatic appellate review by the supreme court.

7 The court that imposes the death sentence sets the execution date. The secretary of corrections designates the executioner and at least 12 witnesses. The execution is by lethal injection. A death sentence may be stayed only by the governor or an appellate court.

This bill applies only to those offenses committed on or after its effective date (the day after publication).

For further information see the *state* ^{and local} fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 301.046 (3) (cm) of the statutes is created to read:

2 301.046 (3) (cm) The prisoner is not awaiting ^{execution under} ~~imposition~~ of a death sentence.

3 SECTION 2. 301.048 (2) (am) 2. of the statutes is amended to read:

4 301.048 (2) (am) 2. He or she is a prisoner serving a felony sentence for a felony
5 that is not punishable by death or life imprisonment and the department directs him
6 or her to participate in the program. This subdivision does not apply to a prisoner
7 serving a bifurcated sentence imposed under s. 973.01.

8 SECTION 3. 302.11 (1) of the statutes is amended to read:

9 302.11 (1) The warden or superintendent shall keep a record of the conduct of
10 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),

Insert
Analysis 1

Insert
3-7

BILL

(1m), (1q), (1w), (1z), (7), and (10), each inmate is entitled to mandatory release on parole by the department. The mandatory release date is established at two-thirds of the sentence. Any calculations under this subsection or sub. (1q) (b) or (2) (b) resulting in fractions of a day shall be rounded in the inmate's favor to a whole day.

SECTION 4. 302.11 (1w) of the statutes is created to read:

302.11 (1w) An inmate ~~serving a sentence of life imprisonment imposed under~~
~~s. 973.0145 (3) (c) or awaiting imposition of~~ ^{execution under} a death sentence is not entitled to mandatory release on parole under this section.

SECTION 5. 302.114 (1) of the statutes is amended to read:

~~302.114 (1) An inmate is subject to this section if he or she is serving a life sentence imposed under s. 973.014 (1g) (a) 1. or 2. or 973.0145 (3) (c) 1. or 2. An inmate serving a life sentence under s. 939.62 (2m) or, 973.014 (1g) (a) 3., or 973.0145 (3) (c) 3. is not eligible for release to extended supervision under this section.~~

SECTION 6. 302.114 (2) of the statutes is amended to read:

~~302.114 (2) Except as provided in subs. (3) and (9), an inmate subject to this section may petition the sentencing court for release to extended supervision after he or she has served 20 years, if the inmate was sentenced under s. 973.014 (1g) (a) 1. or 973.0145 (3) (c) 1., or after he or she has reached the extended supervision eligibility date set by the court, if the inmate was sentenced under s. 973.014 (1g) (a) 2. or 973.0145 (3) (c) 2.~~

SECTION 7. 302.114 (3) (a) (intro.) of the statutes is amended to read:

~~302.114 (3) (a) (intro.) The warden or superintendent shall keep a record of the conduct of each inmate subject to this section, specifying each infraction of the rules. If any inmate subject to this section violates any regulation of the prison or refuses or neglects to perform required or assigned duties, the department may extend the~~

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1 extended supervision eligibility date set under s. 973.014 (1g) (a) 1. or 2. or 973.0145
2 (3) (c) 1. or 2., whichever is applicable, as follows:

3 **SECTION 8.** 302.114 (3) (b) of the statutes is amended to read:

4 302.114 (3) (b) In addition to the sanctions under par. (a), if an inmate subject
5 to this section is placed in adjustment, program, or controlled segregation status, the
6 department may extend the extended supervision eligibility date set under s.
7 973.014 (1g) (a) 1. or 2. or 973.0145 (3) (c) 1. or 2., whichever is applicable, by a
8 number of days equal to 50% of the number of days spent in segregation status. In
9 administering this paragraph, the department shall use the definition of
10 adjustment, program, or controlled segregation status under departmental rules in
11 effect at the time that an inmate is placed in that status.

12 **SECTION 9.** 302.114 (3) (c) of the statutes is amended to read:

13 302.114 (3) (c) An inmate subject to this section who files an action or special
14 proceeding, including a petition for a common law writ of certiorari, to which s.
15 807.15 applies shall have his or her extended supervision eligibility date set under
16 s. 973.014 (1g) (a) 1. or 2. or 973.0145 (3) (c) 1. or 2., whichever is applicable, extended
17 by the number of days specified in the court order prepared under s. 807.15 (3). Upon
18 receiving a court order issued under s. 807.15, the department shall recalculate the
19 date on which the inmate to whom the order applies will be entitled to petition for
20 release to extended supervision and shall inform the inmate of that date.

21 **SECTION 10.** 303.065 (1) (b) of the statutes is amended to read:

22 303.065 (1) (b) 1. A person serving a life sentence, other than a life sentence
23 specified in subd. 2., may be considered for work release only after he or she has
24 reached parole eligibility under s. 304.06 (1) (b) or 973.014 (1) (a) or (b), whichever
25 is applicable, or he or she has reached his or her extended supervision eligibility date

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under s. 302.114 (9) (b) ~~or~~ 973.014 (1g) (a) 1 or 2., ~~or 973.0145 (3) (c) 1. or 2.,~~
whichever is applicable.

SEC. #. AM; 303.065(1)(b)2.

2. A person serving a life sentence under s. 939.62 (2m) (c) ~~or~~ 973.014 (1) (c)
~~303.065 (1) (b) 2.~~ ^{plain} ~~or 973.0145 (3) (c) 1. or 2.,~~ ^{execution under}
or (1g) (a) 3. ~~or 973.0145 (3) (c) 1. or 2.,~~ ^{or awaiting imposition of} a death sentence, may
not be considered for work release.

SECTION 11. 304.02 (5) of the statutes is amended to read:

304.02 (5) Notwithstanding subs. (1) to (3), a prisoner who is serving a life
sentence under s. 939.62 (2m) (c) ^{plain} ~~or~~ 973.014 (1) (c) or (1g) ~~or 973.0145 (3) (c) 1. or 2.,~~
^{execution under} ~~is awaiting imposition of~~ a death sentence, is not eligible for release to parole
supervision under this section.

SECTION 12. 304.06 (1) (b) of the statutes is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) [✓] ~~or (1t)~~ or s. 302.045 (3), 961.49
(2), 973.01 (6), or 973.0135, the parole commission may parole an inmate of the
Wisconsin state prisons or any felon or any person serving at least one year or more
in a county house of correction or a county reforestation camp organized under s.
303.07, when he or she has served 25% of the sentence imposed for the offense, or 6
months, whichever is greater. Except as provided in s. 939.62 (2m) (c) or 973.014 (1)
(b) or (c), (1g), or (2), the parole commission may parole an inmate serving a life term
when he or she has served 20 years, as modified by the formula under s. 302.11 (1)
and subject to extension under s. 302.11 (1q) and (2), if applicable. The person
serving the life term shall be given credit for time served prior to sentencing under
s. 973.155, including good time under s. 973.155 (4). The secretary may grant special
action parole releases under s. 304.02. The department or the parole commission
shall not provide any convicted offender or other person sentenced to the

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1 department's custody any parole eligibility or evaluation until the person has been
2 confined at least 60 days following sentencing.

3 SECTION 13. 304.06 (1t) of the statutes is created to read:

4 304.06 (1t) The parole commission may not parole an inmate who is sentenced
5 to ~~life imprisonment or death~~ under s. 973.0145.

6 SECTION 14. 304.071 (2) of the statutes is amended to read:

7 304.071 (2) If a prisoner is ~~not eligible~~ ineligible for parole under s. 304.06 (1t),
8 939.62 (2m) (c), 961.49 (2), 973.01 (6), 973.014 (1) (c) or (1g), or 973.032 (5), he or she
9 is not eligible for parole under this section.

10 SECTION 15. 939.22 (7) of the statutes is created to read:

11 939.22 (7) "Crime punishable by death or life imprisonment" means a crime for
12 which one or more of the possible penalties is death or life imprisonment.

13 SECTION 16. 939.30 (2) of the statutes is amended to read:

14 939.30 (2) For a solicitation to commit a crime ~~for which the penalty is that is~~
15 punishable by death or life imprisonment, the actor is guilty of a Class C felony. For
16 a solicitation to commit a Class E felony, the actor is guilty of a Class E felony.

17 SECTION 17. 939.31 of the statutes is amended to read:

18 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4), and
19 961.41 (1x), whoever, with intent that a crime be committed, agrees or combines with
20 another for the purpose of committing that crime may, if one or more of the parties
21 to the conspiracy ~~does~~ do an act to effect its object, be fined or imprisoned or both not
22 to exceed the maximum provided for the completed crime; except that for a
23 conspiracy to commit a crime ~~for which the penalty is that is punishable by death or~~
24 life imprisonment, the actor is guilty of a Class B felony.

25 SECTION 18. 939.32 (1) (a) of the statutes is amended to read:

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1 939.32 (1) (a) Whoever attempts to commit a crime ~~for which the penalty is that~~
2 is punishable by death or life imprisonment is guilty of a Class B felony.

3 ~~SECTION 19. 939.50 (1) (a) of the statutes is renumbered 939.50 (1) (am).~~

4 ~~SECTION 20. 939.50 (1) (ag) of the statutes is created to read:~~

5 ~~939.50 (1) (ag) Class AA felony.~~

6 ~~SECTION 21. 939.50 (2) of the statutes is amended to read:~~

7 ~~939.50 (2) A felony is a Class AA, A, B, BC, C, D, or E felony when it is so~~
8 ~~specified in chs. 939 to 951.~~

9 ~~SECTION 22. 939.50 (3) (a) of the statutes is renumbered 939.50 (3) (am).~~

10 ~~SECTION 23. 939.50 (3) (ag) of the statutes is created to read:~~

11 ~~939.50 (3) (ag) For a Class AA felony, life imprisonment or death, as determined~~
12 ~~under s. 973.0145.~~

13 ~~SECTION 24. 939.60 of the statutes is amended to read:~~

14 **939.60 Felony and misdemeanor defined.** A crime that is punishable by
15 death or imprisonment in the Wisconsin state prisons is a felony. Every other crime
16 is a misdemeanor.

17 ~~SECTION 25. 939.62 (2m) (a) 2m. c. of the statutes is amended to read:~~

18 ~~939.62 (2m) (a) 2m. c. The solicitation, conspiracy, or attempt, under s. 939.30,~~
19 ~~939.31, or 939.32, to commit a Class AA felony or a Class A felony.~~

20 SECTION 26. 939.62 (2m) (c) of the statutes is amended to read:

21 939.62 (2m) (c) If the actor is a persistent repeater and the actor is not
22 sentenced to death under s. 973.0145, the term of imprisonment for the felony for
23 which the persistent repeater presently is being sentenced under ch. 973 is life
24 imprisonment without the possibility of parole or extended supervision.

25 SECTION 27. 939.624 (2) of the statutes is amended to read:

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1 939.624 (2) If a person has one or more prior convictions for a serious violent
2 crime or a crime punishable by death or life imprisonment and subsequently
3 commits a serious violent crime, the court shall sentence the person to not less than
4 5 years' imprisonment, but otherwise the penalties for the crime apply, subject to any
5 applicable penalty enhancement. The court shall not place the defendant on
6 probation.

7 SECTION 28. 939.625 (1) (b) 2. of the statutes is amended to read:

8 939.625 (1) (b) 2. If the maximum term of imprisonment for a felony is more
9 than 5 years or is a life term or the felony is punishable by death, the maximum term
10 of imprisonment for the felony may be increased by not more than 5 years.

11 SECTION 29. 939.63 (1) (a) 2. of the statutes is amended to read:

12 939.63 (1) (a) 2. If the maximum term of imprisonment for a felony is more than
13 5 years or is a life term or the felony is punishable by death, the maximum term of
14 imprisonment for the felony may be increased by not more than 5 years.

15 SECTION 30. 939.632 (1) (e) 2. of the statutes is amended to read:

16 939.632 (1) (e) 2. The ~~solicitation~~, conspiracy, or attempt, under s. 939.30,
17 939.31, or 939.32, to commit a Class AA felony or a Class A felony.

18 SECTION 31. 940.01 (1) (a) of the statutes is amended to read:

19 940.01 (1) (a) Except as provided in sub. (2) ~~par. (am)~~, whoever causes the death
20 of another human being with intent to kill that person or another is guilty of a Class
21 A felony.

22 SECTION 32. 940.01 (1) (am) of the statutes is created to read:

23 940.01 (1) (am) Whoever causes the death of another human being with intent
24 to kill that person or another is guilty of a Class AA felony if the victim has not
25 attained the age of 16 years, unless any of the following applies:

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1. The actor is less than 16 years of age when he or she commits the offense.

2. Notwithstanding s. 939.05, the actor is not guilty of a Class AA felony as a party to a crime if the actor did not intend that a person be killed.

SECTION 33. 940.01 (1) (b) of the statutes is renumbered 940.01 (1) (b) (intro.) and amended to read:

940.01 (1) (b) (intro.) ~~Except as provided in sub. (2), whoever~~ Whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child, or kill another is guilty of a Class ~~A~~ AA felony, except as follows:

SECTION 34. 940.01 (1) (b) 1. and 2. of the statutes are created to read:

940.01 (1) (b) 1. If the actor is less than 16 years of age when he or she commits the offense, the actor is guilty of a Class A felony.

2. If the actor is a party to the offense as provided under s. 939.05 and did not intend that an unborn child, the woman who was pregnant with that unborn child, or another be killed, the actor is guilty of a Class A felony.

SECTION 35. 940.01 (2) (intro.) of the statutes is amended to read:

940.01 (2) MITIGATING CIRCUMSTANCES. (intro.) ~~The~~ Notwithstanding sub. (1), the following are affirmative defenses to prosecution under this section ~~which that~~ mitigate the offense offenses under sub. (1) to 2nd-degree intentional homicide under s. 940.05:

SECTION 36. 948.35 (1) (b) of the statutes is amended to read:

948.35 (1) (b) ~~For a solicitation to commit a Class AA felony or a Class A felony~~ under the circumstances described under par. (a), the person may be imprisoned not to exceed the maximum period of imprisonment for a Class B felony.

SECTION 37. 961.335 (1m) of the statutes is created to read:

24
Insert
10-24 25

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1 961.335 (1m) Notwithstanding sub. (1), upon the application of the secretary
2 of corrections for a permit to obtain a controlled substance for purposes of an
3 execution under s. 973.017, the controlled substances board shall issue a permit
4 under this section.

5 **SECTION 38.** 967.02 (1m) of the statutes is created to read:

6 967.02 (1m) "Crime punishable by death or life imprisonment" has the
7 meaning given in s. 939.22 (7).
8

9 **SECTION 39.** 971.17 (1) of the statutes is amended to read:

10 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
11 of mental disease or mental defect, the court shall commit the person to the
12 department of health and family services for a specified period not exceeding
13 two-thirds of the maximum term of imprisonment that could be imposed under s.
14 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
15 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d), or (3m), 939.62, 939.621,
16 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b), and 961.48 and
17 other penalty enhancement statutes, as applicable, subject to the credit provisions
18 of s. 973.155. If the ~~maximum term of imprisonment is~~ crime is punishable by death
19 or life imprisonment, the commitment period specified by the court may be life,
20 subject to termination under sub. (5).

21 **SECTION 40.** 972.03 of the statutes is amended to read:

22 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
23 challenges except as otherwise provided in this section. When the crime charged is
24 punishable by death or life imprisonment, the state is entitled to 6 peremptory
25 challenges and the defendant is entitled to 6 peremptory challenges. If there is more
than one defendant, the court shall divide the challenges as equally as practicable

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1 among them; and if their defenses are adverse and the court is satisfied that the
2 protection of their rights so requires, the court may allow the defendants additional
3 challenges. If the crime is punishable by death or life imprisonment, the total
4 peremptory challenges allowed the defense shall not exceed 12 if there are only 2
5 defendants and 18 if there are more than 2 defendants; in other felony cases 6
6 challenges if there are only 2 defendants and 9 challenges if there are more than 2.
7 In misdemeanor cases, the state is entitled to 3 peremptory challenges and the
8 defendant is entitled to 3 peremptory challenges, except that if there are 2
9 defendants, the court shall allow the defense 4 peremptory challenges, and, if there
10 are more than 2 defendants, the court shall allow the defense 6 peremptory
11 challenges. Each side shall be allowed one additional peremptory challenge if
12 additional jurors are to be selected under s. 972.04 (1).

13 **SECTION 41.** 972.13 (6) of the statutes is amended to read:

14 972.13 (6) The following forms may be used for judgments:

15 STATE OF WISCONSIN

16 County

17 In.... Court

18 The State of Wisconsin

19 vs.

20(Name of defendant)

21 UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

22 IT IS ADJUDGED That the defendant has been convicted upon the defendant's
23 plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty)
24 (no contest) on the.... day of...., (year), of the crime of.... in violation of s.....; and
25 the court having asked the defendant whether the defendant has anything to state

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1 why sentence should not be pronounced, and no sufficient grounds to the contrary
2 being shown or appearing to the court.

3 *IT IS ADJUDGED That the defendant is guilty as convicted.

4 *IT IS ADJUDGED That the defendant shall be executed by lethal injection.

5 *IT IS ADJUDGED That the defendant is hereby committed to the Wisconsin
6 state prisons (county jail of.... county) for an indeterminate term of not more than.....

7 *IT IS ADJUDGED That the defendant is ordered to serve a bifurcated
8 sentence consisting of year(s) of confinement in prison and months/years of
9 extended supervision.

10 *IT IS ADJUDGED That the defendant is placed in the intensive sanctions
11 program subject to the limitations of section 973.032 (3) of the Wisconsin Statutes
12 and the following conditions:....

13 *IT IS ADJUDGED That the defendant is hereby committed to detention in
14 (the defendant's place of residence or place designated by judge) for a term of not
15 more than....

16 *IT IS ADJUDGED That the defendant is placed on lifetime supervision by the
17 department of corrections under section 939.615 of the Wisconsin Statutes.

18 *IT IS ADJUDGED That the defendant is ordered to pay a fine of \$.... (and the
19 costs of this action).

20 *IT IS ADJUDGED That the defendant pay restitution to....

21 *IT IS ADJUDGED That the defendant is restricted in his or her use of
22 computers as follows:....

23 *The.... at.... is designated as the Reception Center to which the defendant shall
24 be delivered by the sheriff.

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1 *IT IS ORDERED That the clerk deliver a duplicate original of this judgment
2 to the sheriff who shall forthwith execute the same and deliver it to the warden.

3 Dated this.... day of...., (year)

4 BY THE COURT....

5 Date of Offense....,

6 District Attorney....,

7 Defense Attorney....

8 *Strike inapplicable paragraphs.

9 STATE OF WISCONSIN

10 County

11 In.... Court

12 The State of Wisconsin

13 vs.

14 (Name of defendant)

15 On the.... day of...., (year), the district attorney appeared for the state and
16 the defendant appeared in person and by.... the defendant's attorney.

17 UPON ALL THE FILES, RECORDS AND PROCEEDINGS

18 IT IS ADJUDGED That the defendant has been found not guilty by the verdict
19 of the jury (by the court) and is therefore ordered discharged forthwith.

20 Dated this.... day of...., (year)

21 BY THE COURT....

22 SECTION 42. 973.01 (3) of the statutes is amended to read:

23 973.01 (3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for
24 a felony that is punishable by life imprisonment or by death, he or she is not subject

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homicide under s. 940.01 to which s. 939.648 (2) and (3)(b) are found to apply

to this section but shall be sentenced under s. 973.014 (1g) or 973.0145, whichever is applicable.

SECTION 43. 973.014 (1g) (a) (intro.) of the statutes is amended to read:

973.014 (1g) (a) (intro.) Except as provided in sub. (2) or s. 973.0145 (3) (c), when a court sentences a person to life imprisonment for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:

SECTION 44. 973.0145 of the statutes is created to read:

973.0145 Sentence of death or life imprisonment for ~~Class AA felony~~ ^{(B) homicide by terrorist}

(1) (a) Upon conviction of a defendant of a ~~Class AA felony~~ ^{(B) homicide by terrorist}, the court shall conduct a separate sentencing ^{hearing} ~~proceeding~~ to determine whether the defendant should be sentenced to death or life imprisonment. ^{(2) (B)} The trial judge shall conduct the ~~proceeding~~ ^{hearing} before the trial jury, if there was a jury trial, as soon as practicable. If the trial jury is unable to reconvene for a hearing on the issue of penalty, the trial judge may summon a new jury to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the court shall conduct the sentencing ^{hearing} ~~proceeding~~ before a jury summoned for that purpose unless the defendant waives the right to a jury.

(b) In the proceeding, ~~the court shall admit~~ any evidence that may be relevant to the sentence regarding any mitigating circumstance. ~~The court shall admit any other evidence according to the rules of evidence applicable at a criminal trial. The court shall provide the defendant with a fair opportunity to rebut any hearsay statements. (This paragraph does not authorize the introduction of any evidence secured in violation of the state or federal constitution.) The state has the burden of proof, beyond a reasonable doubt, regarding the existence of aggravating~~

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1 ~~circumstances~~ The defendant has the burden of proof, by a preponderance of the
2 evidence, regarding mitigating circumstances. The court shall permit the state and
3 the defendant or his or her counsel to present arguments for or against a sentence
4 of death.

Insert 16-55 (2) (a) Unless the defendant waives the right to a jury, the jury shall deliberate
6 after hearing all of the evidence and, by a majority vote, shall render an advisory
7 sentence of life imprisonment or death to the court, based upon the following
8 matters:

9 1. The existence of aggravating circumstances under sub. (5).

10 2. The existence of mitigating circumstances under sub. (6).

11 (b) Upon the request of the defendant or the state, the court shall explain to the
12 jury the court's options under sub. (3) (c) to sentence the defendant to life without the
13 possibility of extended supervision or with delayed eligibility for extended
14 supervision. If the defendant is not eligible for release to extended supervision, the
15 court shall also, upon request of the defendant or the state, explain to the jury the
16 defendant's ineligibility for extended supervision.

17 (c) If the jury recommends life imprisonment, it may further recommend
18 restrictions on the defendant's eligibility for extended supervision or recommend
19 that the defendant not be eligible for extended supervision.

20 (4) (3) (a) Notwithstanding the recommendation of a majority of the jury, the court,
21 after weighing the aggravating and mitigating circumstances, shall enter a sentence
22 of life imprisonment or death, but if the court imposes a sentence of death, it shall
23 set forth in writing its findings upon which the sentence of death is based as to the
24 facts:

25 1. That sufficient aggravating circumstances exist under sub. (5); and

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1 2. That there are insufficient mitigating circumstances under sub. (6) to
2 outweigh the aggravating circumstances.

3 (b) In each case in which the court imposes the death sentence, the court must
4 support its determination by specific written findings of fact based upon the
5 circumstances in subs. (5) and (6) and upon the records of the trial and the sentencing
6 proceedings.

7 (c) If the court does not make the findings required under par. (b) for a death
8 sentence, the court shall impose a sentence of life imprisonment and shall make an
9 extended supervision eligibility determination regarding the person and adopt one
10 of the following options:

11 1. The person is eligible for release to extended supervision after serving 20
12 years.

13 2. The person is eligible for release to extended supervision on a date set by the
14 court. Under this subdivision, the court may set any later date than that provided
15 in subd. 1., but may not set a date that occurs before the earliest possible date under
16 subd. 1.

17 3. The person is not eligible for release to extended supervision.

18 (d) When imposing a sentence of life imprisonment in accordance with par. (c)
19 1. or 2., the court shall inform the person of the provisions of s. 302.114 (3) and the
20 procedure for petitioning under s. 302.114 (5) for release to extended supervision.

21 (4) If a death sentence is imposed, the judgment of conviction and sentence of
22 death is subject to automatic review by the supreme court within 60 days after
23 certification by the sentencing court of the entire record, unless the supreme court,
24 for good cause shown, extends the time for an additional period not to exceed 30 days.

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1 The review by the supreme court has priority over all other cases and shall be heard
2 in accordance with rules promulgated by the supreme court.

3 (5) The court and jury shall consider one or more of the following as
4 aggravating circumstances:

5 (a) The defendant was on parole or extended supervision under a sentence for
6 a felony or was confined in prison when he or she committed the Class AA felony.

7 (b) The Class AA felony was committed for the purpose of avoiding or
8 preventing a lawful arrest or effecting an escape from custody.

9 (c) The defendant knowingly created a great risk to many persons.

10 (d) The Class AA felony was committed to disrupt or hinder the lawful exercise
11 of any governmental function or the enforcement of laws.

12 (e) The defendant intentionally caused bodily harm or mental anguish to the
13 victim or another before the victim died.

14 (f) During the commission of the offense, the defendant enjoyed or was utterly
15 indifferent to the suffering of another.

16 (6) The court and jury shall consider as a mitigating factor any aspect of the
17 defendant's character, background, or record or any of the circumstances of the
18 offense that the defendant offers as a basis for a sentence other than death.
19 Mitigating circumstances may include, but are not limited to, any of the following:

20 ✓ (a) The defendant has no significant history of prior criminal activity.

21 (b) The Class AA felony was committed while the defendant was under the
22 influence of extreme mental or emotional disturbance.

23 ✓ (c) The defendant was an accomplice in the Class AA felony committed by
24 another person and the defendant's participation was relatively minor.

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1 ~~(d) The defendant acted under extreme duress or under the substantial~~
2 ~~domination of another person.~~

3 ~~(e) The capacity of the defendant to appreciate the criminality of his or her~~
4 ~~conduct or to conform his or her conduct to the requirements of law was substantially~~
5 ~~impaired.~~

6 ~~(f) The age of the defendant at the time of the crime affected his or her~~
7 ~~judgment.~~

8 ~~(g) The victim was a participant in the defendant's conduct or consented to the~~
9 ~~act.~~

10 ~~(9) (7)~~ The court that imposes a sentence of death shall set the date for execution.
11 The defendant shall be committed to the Wisconsin state prisons pending the
12 execution of the death sentence.

13 ~~(10) (8)~~ The execution of a death sentence shall be by lethal injection.

14 SECTION 45. 973.016 of the statutes is created to read:

15 **973.016 Stay of execution of death sentence.** The execution of a death
16 sentence may be stayed only by the governor or incident to an appeal.

17 SECTION 46. 973.017 of the statutes is created to read:

18 **973.017 Execution of death sentence.** The secretary of corrections shall
19 designate the executioner who shall provide a person subject to a death sentence with
20 an intravenous injection of one or more substances in a lethal quantity. A person is
21 immune from civil or criminal liability for his or her acts or omissions, in good faith,
22 in regard to a lawful execution under this section. The secretary may not direct a
23 physician to be present or require a physician to announce when death has occurred.
24 A physician may certify the death after a person, other than a physician, has
25 determined or pronounced death. The secretary shall designate 12 citizens to

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1 witness the execution. The convicted person may request that certain additional
2 people be allowed to witness the execution. The secretary shall grant any such
3 reasonable request. The secretary may allow representatives of the news media to
4 witness the execution under rules of the department. No other persons may be
5 allowed to witness the execution.

6 **SECTION 47.** 973.032 (2) (b) of the statutes is amended to read:

7 973.032 (2) (b) Notwithstanding par. (a), the court may not sentence a person
8 under sub. (1) if he or she is convicted of a felony punishable by death or life
9 imprisonment or has at any time been convicted, adjudicated delinquent, or found
10 not guilty or not responsible by reason of insanity or mental disease, defect, or illness
11 for committing a violent offense, as defined in s. 301.048 (2) (bm).

12 **SECTION 48.** 973.09 (1) (c) of the statutes is amended to read:

13 973.09 (1) (c) When a person is convicted of any crime ~~which~~ that is punishable
14 by death or life imprisonment, the court ~~shall~~ may not place the person on probation.

15 ~~**SECTION 49.** 978.07 (1) (c) 1. of the statutes is amended to read:~~

16 ~~978.07 (1) (c) 1. Any case record of a felony punishable by death or life~~
17 ~~imprisonment or a related case, after the defendant's parole eligibility date under s.~~
18 ~~304.06 (1) or 973.014 (1) or date of eligibility for release to extended supervision~~
19 ~~under s. 973.014 (1g) (a) 1. or 2. or 973.0145 (3) (c) 1. or 2., whichever is applicable,~~
20 ~~or 50 years after the commencement of the action, whichever occurs later. If there~~
21 ~~is no parole eligibility date or no date for release to extended supervision, the district~~
22 ~~attorney may destroy the case record after the defendant's death.~~

23 ~~**SECTION 50. Initial applicability.**~~

BILL

1 (1) This act first applies to offenses committed on the effective date of this
2 subsection.

3 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3845/P1ins
RLR:.....

Insert Relating Clause: ✓

No 9 certain felonies committed with intent to terrorize, threats to use weapons of mass destruction, threats to commit acts of terrorism, supporting acts of terrorism, harboring a terrorist, a sentence of death or life imprisonment for certain first-degree intentional homicides, and providing penalties.

Insert Analysis 1:

subsub

Terrorism penalty enhancer

Current law authorizes increased penalties for certain felonies (crimes punishable by incarceration in prison) that are committed with intent to terrorize. The penalty enhancer is applicable to felonies committed under one of the following circumstances (terrorism offenses): 1) the felony results in bodily harm or death to another; 2) the felony results in damage of \$25,000 or more to the property of another; or 3) the felony involves the use of force or violence or the threat of force or violence. A person has intent to terrorize if he or she has intent to influence the policy of a governmental unit or to punish a governmental unit for a prior policy decision. If a person is convicted of a felony and the terrorism enhancer is found to apply, the maximum fine for the underlying felony may be increased by up to \$50,000, and the maximum term of imprisonment for the underlying felony may be increased by up to ten years.

This bill expands intent to terrorize to include intent to affect the conduct of a governmental unit by homicide or kidnapping and to include intent to intimidate or coerce a civilian population. The bill also modifies intent to influence the policy of a governmental unit to require that the actor intend to influence by intimidation or coercion. The bill specifies that the terrorism penalty enhancer applies to a felony if the perpetrator causes bodily harm or death to another while in immediate flight after committing the felony. The bill also authorizes a sentence of death for first-degree intentional homicide with intent to terrorize, if the person who commits the homicide is at least 18 years of age.

Threat crimes

subsub

Under current law, it is a Class E felony to intentionally make a false threat or convey false information concerning an attempt or alleged attempt to destroy property by means of explosives. (The maximum penalties for classified felonies are listed below.)

This bill repeals the crime concerning false threats to use explosives and creates a new Class E felony that prohibits a person from intentionally threatening to use a destructive device against another or from releasing or disseminating a harmful

substance. A destructive device is defined as a bomb, a grenade, a rocket having a propellant charge of more than 4 ounces, a missile having an explosive or incendiary charge of more than one-quarter ounce, a mine, or a similar explosive device. A harmful substance is defined as radioactive material that is dangerous to human life, a toxic or poisonous chemical, the precursor of a toxic or poisonous chemical, or a disease organism.

The bill also makes it a Class D felony to threaten, with intent to terrorize, to commit a terrorism offense, if the threat induces a reasonable expectation or fear that the offense will be committed.

subsub → ***Soliciting or supporting terrorism***

Under current law, a person who intends that a felony be committed and who advises another to commit that crime under circumstances that indicate unequivocally that he or she has the intent is guilty of the crime of solicitation. Solicitation is generally a Class D felony. However, if the crime that the person advises another to commit is punishable by life imprisonment, the penalty for solicitation is a Class C felony. If the underlying crime is a Class E felony, solicitation of that crime is also a Class E felony.

Also under current law, a person who intends that a crime be committed and agrees or combines with another for the purpose of committing that crime is guilty of conspiracy to commit the crime, if one or more of the parties to the conspiracy does an act to effect its object. The penalty for conspiracy is the same as the penalty for the completed crime, except that conspiracy to commit a crime punishable by life imprisonment is a Class B felony.

The bill clarifies that the crime of solicitation applies to solicitation of an act of terrorism regardless of whether the solicited act is to be committed in this state, as long as the act would be a crime if committed in this state. The penalties for advising another to commit a terrorism offense outside Wisconsin are the same as the penalties for the crime of solicitation.

This bill also makes it a crime to provide, ask another to provide, or collect material support or resources with the intent that the support or resources be used to plan, commit, conceal, or flee a terrorism offense or an act that would be a terrorism offense if committed in this state, if the person providing, requesting, or collecting material support or resources intends that the offense or act terrorize. If the material support or resources are valued at not more than \$1,000, the crime is a Class D felony. If the material support or resources are valued at more than \$1,000, the crime is a Class C felony.

subsub → ***Harboring a Terrorist***

Under current law, it is a Class E felony for a person who intends to prevent the apprehension of a felon to harbor or aid that felon, and for a person who intends to prevent the apprehension, prosecution, or conviction of a felon to destroy, alter, hide or disguise physical evidence or to place false evidence.

This bill makes it a Class C felony to commit the crime of harboring or aiding a felon, if the felon, with intent to terrorize, committed a terrorism offense or an act outside this state that would be a terrorism offense if committed in this state. If the

terrorism offense or act resulted in the death of another, the person who harbors or aids the felony is guilty of a Class BC felony.

subsub → **Penalties for classified felonies**

The maximum penalties for classified felonies are a fine not to exceed \$10,000 or imprisonment for the following number of years or both (a term of imprisonment consists of a term of confinement in prison followed by a term of extended supervision):

center headings

<u>Felony classification</u>	<u>Maximum term of imprisonment</u>
Class B	60 years
Class BC	30 years
Class C	15 years
Class D	10 years
Class E	5 years

move in to margin

Capital Punishment

Currently, no Wisconsin crimes are punishable by death. First-degree homicide is punishable by life imprisonment. The bill makes commission of a first-degree homicide by a person who is 18 years of age or older and who has intent to terrorize punishable by death or life imprisonment.

subsub Under the bill, if a person is convicted of committing first-degree homicide with intent to terrorize, the trial court convenes a separate sentencing hearing at which the defendant is entitled to a jury. If the defendant elects to have a jury at sentencing, the trial jury shall serve unless there was no trial jury or if the jury is found to lack impartiality with respect to sentencing. If necessary, the court shall assemble a new jury for sentencing.

At a sentencing hearing, the defense may present evidence relevant to mitigation of the defendant's crime. The prosecution may rebut evidence presented by the defense. Relevant mitigating circumstances include the following:

or her
~~(b) 1.~~ The defendant has no significant history of prior criminal convictions involving the use of violence against another person.

~~(b) 2.~~ The defendant was mentally retarded at the time of the crime, or the defendant's mental capacity was impaired or his ability to conform his conduct to the requirement of law was impaired, although not so impaired as to constitute a defense to prosecution.

or her
~~(b) 3.~~ The defendant was under duress or under the domination of another person, although not such duress or domination as to constitute a defense to prosecution.

~~(b) 4.~~ The defendant was criminally liable for the present offense of murder committed by another, but his participation in the offense was relatively minor, although not so minor as to constitute a defense to prosecution.

~~(b) 5.~~ The homicide was committed while the defendant was mentally or emotionally disturbed or under the influence of alcohol or any drug, although not to such an extent as to constitute a defense to prosecution.

5+6T
10/16
Any other circumstance concerning the crime, the defendant's state of mind or condition at the time of the crime, or the defendant's character, background, or record that would be relevant to mitigation or punishment for the crime.

If there is a jury, the court shall instruct the jury prior to its deliberations that the jury's sentencing determination must be unanimous or the court will not accept it. The court shall further instruct the jury that if the jury does not agree on a sentence, the court shall sentence the defendant to life imprisonment and that under a sentence of life imprisonment the defendant shall serve a minimum of 20 years in prison and that the judge shall determine as part of the sentence whether the defendant shall be eligible for release to extended supervision, and if so at what time after 20 years. Finally, upon motion from any party, the court shall inform the jury whether the defendant is a repeat offender who is barred from ever being released to extended supervision.

If the jury unanimously determines that the defendant should be sentenced to death, the court shall sentence the defendant to death. If the jury unanimously determines that the defendant should be sentenced to life imprisonment, or if the jury cannot agree on a sentence, the judge shall sentence the defendant to life imprisonment and make a determination regarding the defendant's eligibility to petition for release to extended supervision, unless the defendant is permanently barred from release to extended supervision. If there is no jury, the court shall review the evidence of mitigation and determine whether to sentence the defendant to death or to life imprisonment.

years
If, after the finding of guilt and before sentencing, the defendant files a motion alleging that he or she is mentally retarded and shows cause to believe that he or she is mentally retarded, the court shall hold a hearing on the issue of mental retardation unless the defendant is being sentenced for a crime committed while the defendant was incarcerated under a criminal sentence. Under the bill, "mentally retarded" means having significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior which were manifested before the age of 18. The court shall withhold determination in the hearing on mental retardation until the sentence is determined. If the defendant is sentenced to death and the court finds that the defendant is mentally retarded, the court shall set aside the sentence of death and instead sentence the defendant to life imprisonment. If the defendant is sentenced to life imprisonment, the court shall not make a determination regarding mental retardation.

1
2 **Insert 3-7:**

3 **SECTION 1.** 301.048 (2) (bm) 1. a. of the statutes is amended to read:

4 301.048 (2) (bm) 1. a. A crime specified in s. 940.01, 940.02, 940.03, 940.05,
5 940.06, 940.08, 940.09, 940.10, 940.19 (3), (4), or (5), 940.195 (3), (4), or (5), 940.20,

1 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29,
2 940.295 (3) (b) 1g., 1m., 1r., 2, or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20
3 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04,
4 943.06, 943.10 (2), 943.23 (1g), (1m), or (1r), 943.30, 943.32, 946.43, 947.015 947.07,
5 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

6 History: 1991 a. 39; 1993 a. 79, 97, 227, 437, 479; 1995 a. 27; 1997 a. 27, 133, 181, 283; 1999 a. 9.

7
8 **Insert 7-9:** ✓

9 **SECTION 2.** 895.035 (4a) (a) 2. of the statutes is amended to read:

10 895.035 (4a) (a) 2. An act resulting in a violation of s. 943.01, 943.02, 943.03,
11 943.05, 943.06, or 947.015 947.07.

12
13 **Insert 7-12:** ✓

14 History: 1985 a. 311; 1987 a. 27; 1993 a. 71; 1995 a. 24, 77, 262, 352; 1997 a. 27, 35, 205, 239, 252; 1999 a. 9, 32.

SECTION 3. 939.22 (18m) of the statutes is created to read:

15 939.22 (18m) "Intent to terrorize" means intent to influence the policy of a
16 governmental unit by intimidation or coercion, to punish a governmental unit for a
17 prior policy decision, to affect the conduct of a governmental unit by homicide or
18 kidnapping, or to intimidate or coerce a civilian population. In this subsection,
19 "governmental unit" has the meaning given in s. 939.648 (1).

20 **SECTION 4.** 939.30 (1) of the statutes is amended to read:

21 939.30 (1) Except as provided in sub. (2) and ss. 947.09, 948.35, and 961.455,
22 whoever, with intent that a felony be committed, advises another to commit that

1 crime under circumstances that indicate unequivocally that he or she has the intent
2 is guilty of a Class D felony.

3 History: 1977 c. 173; 1989 a. 121; 1991 a. 153; 1995 a. 448.

4 **Insert 10-24:**

5 **SECTION 5.** 939.648 (2) (b) 1. of the statutes is amended to read:

6 939.648 (2) (b) 1. The person causes bodily harm, great bodily harm, or death
7 to another during commission of the felony or while in immediate flight after
8 commission of the felony.

9 History: 1993 a. 98.

9 **SECTION 6.** 939.648 (2) (c) of the statutes is amended to read:

10 939.648 (2) (c) Commits the felony with the intent to influence the policy of a
11 governmental unit ~~or~~ by intimidation or coercion, to punish a governmental unit for
12 a prior policy decision, to affect the conduct of a governmental unit by homicide or
13 kidnapping, or to intimidate or coerce a civilian population.

14 History: 1993 a. 98.

14 **SECTION 7.** 939.648 (3) of the statutes is renumbered 939.648 (3) (a) and
15 amended to read:

16 939.648 (3) (a) ~~The Except as provided under~~ ^{in par.} (b), the maximum fine prescribed
17 by law for the felony may be increased by not more than \$50,000 and the maximum
18 period of imprisonment prescribed by law for the felony may be increased by not more
19 than 10 years.

20 History: 1993 a. 98.

20 **SECTION 8.** 939.648 (3) (b) of the statutes is created to read:

21 939.648 (3) (b) If the underlying felony is first-degree intentional homicide
22 under s. 940.01 and the person is 18 years of age or older when he or she commits the

felony, the person may be sentenced to death or life imprisonment as determined under s. 973.0145. ✓

SECTION 9. 939.648 (3m) of the statutes is created to read:

939.648 (3m) The state must declare its intention to seek a sentence of death under sub. (3) (b) before arraignment or acceptance of a plea, ^{stat} or else is barred from seeking a sentence of death. ~~_____~~

SECTION 10. 946.47 (1) (intro.) of the statutes is amended to read:

946.47 (1) (intro.) ~~Whoever~~ ⁱⁿ Except as provided under sub. (1m), whoever does either of the following is guilty of a Class E felony:

History: 1977 c. 173; 1993 a. 486; 1999 a. 162.

SECTION 11. 946.47 (1m) of the statutes is created to read:

946.47 (1m) (a) If the felon under sub. (1), with intent to terrorize, committed a felony that satisfies s. 939.648 (2) (a) and (b) or committed an act outside this state that would be a felony that satisfies s. 939.648 (2) (a) and (b) if committed in this state, the person who violates sub. (1) is guilty of a Class C felony.

(b) If the felon under sub. (1), with intent to terrorize, committed a felony that satisfies s. 939.648 (2) (a) and (b) or committed an act outside this state that would be a felony that satisfies s. 939.648 (2) (a) and (b) if committed in this state, and the felony or act resulted in the death of another, the person who violates sub. (1) is guilty of a Class BC felony.

~~(c) If the felon under sub. (1) violated s. 940.015 or committed an act outside this state that would be a violation of s. 940.015 if committed in this state, the person who violates sub. (1) is guilty of a Class BC felony.~~

SECTION 12. 946.82 (4) of the statutes, as affected by 2001 Wisconsin Act 16,

is amended to read:

946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (c) and (d), 943.201, 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (c), 943.60, 943.70, 943.76, 944.205, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 947.015, 947.07, 948.05, 948.08, 948.12, and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a. 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121, 303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94, 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a. 35, 79, 101, 140, 143, 252; 1999 a. 9, 150.

SECTION 13. 947.015 of the statutes is repealed.

SECTION 14. 947.07 of the statutes is created to read:

947.07 Threatening use of weapon of mass destruction. (1) In this section:

(a) "Destructive device" means a bomb, a grenade, a rocket having a propellant charge of more than 4 ounces, a missile having an explosive or incendiary charge of more than one-quarter ounce, a mine, or a similar explosive device.

(b) "Harmful substance" means radioactive material that is dangerous to human life, a toxic or poisonous chemical or precursor of a toxic or poisonous chemical, or a disease organism.

(2) Whoever intentionally threatens to use a destructive device against a person or to release or disseminate a harmful substance, if the threat induces a reasonable expectation or fear that the destructive device will be used or that the harmful substance will be released or disseminated, is guilty of a Class E felony.

SECTION 15. 947.08 of the statutes is created to read:

947.08 Terrorism threat. Whoever, with intent to terrorize, makes or conveys a threat to commit a felony that satisfies s. 939.648 (2) (a) and (b), if the threat induces a reasonable expectation or fear that the felony will be committed, is guilty of a Class D felony.

SECTION 16. 947.09 of the statutes is created to read:

947.09 Solicitation of a terrorist act. (1) Whoever, with intent to terrorize and with intent that a felony that satisfies s. 939.648 (2) (a) and (b), or an act that would be a felony that satisfies s. 939.648 (2) (a) and (b) if committed in this state, be committed, advises another to commit that felony or act under circumstances that indicate unequivocally that he or she has the intent that the felony or act be committed may be penalized as provided under sub. (2).

(2) A person who violates sub. (1) is guilty of a Class D felony unless one of the following applies:

(a) If the act solicited under sub. (1) would be punishable by death or life imprisonment if committed in this state, the person is guilty of a Class C felony.

(b) If the act solicited under sub. (1) would be a Class E felony if committed in this state, the person is guilty of a Class E felony.

SECTION 17. 947.10 of the statutes is created to read:

947.10 Providing or requesting support for terrorist act. (1) In this section, "material support or resources" means currency or other financial securities,

1 financial services, lodging, training, safehouses, false documentation or
2 identification, communications equipment, facilities, weapons, lethal substances,
3 explosives, personnel, transportation, and other physical assets, except medicine or
4 religious materials.

5 (2) Any person who provides, asks another to provide, or collects material
6 support or resources with the intent that the material support or resources be used
7 by a party to the felony or act to plan, commit, conceal, or flee a felony that satisfies
8 s. 939.648 (2) (a) and (b), or an act that would be a felony that satisfies s. 939.648 (2)
9 (a) and (b) if committed in this state, if the person intends that the felony or act
10 terrorize, is guilty of a Class D felony, if the value of the material support or resources
11 provided, requested, or collected does not exceed \$1,000, and is guilty of a class C
12 felony if the value exceeds \$1,000.

13
14 **Insert 11-7:**

15 **SECTION 18.** 969.08 (10) (b) of the statutes is amended to read:

16 969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4),
17 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195
18 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25,
19 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30,
20 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10,
21 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 947.07,
22 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403; 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180, 295; 1999 a. 32.

23
24 **Insert 15-12:**

No 8

Nothing in this section precludes the state at any time from retracting its decision to seek a sentence of death. If the state chooses not to seek a sentence of death, the court shall sentence the defendant to life imprisonment as provided under s. 973.014.

Insert 15-13:

No 8

Before commencing the sentencing hearing with the trial jury, the court shall determine whether the jurors can impartially render a sentencing determination based on evidence presented in the sentencing hearing. The court shall examine each juror individually outside the presence of the other jurors. The court shall determine the scope of the examination of individual jurors and may use questions proposed by any of the parties. The individual juror examinations shall be conducted on the record, but the court may seal the record of an individual juror's examination upon the motion of any party and a showing of good cause. If the court finds that a juror is not impartial, the court shall discharge that juror and replace the juror with the next alternate juror. If no alternate juror is available, the court shall dismiss the trial jury and impanel a new jury.

Insert 15-18:

(3) At the sentencing hearing, the defendant may present any evidence that is relevant to a mitigating circumstance under sub. (5). The state may not offer evidence or argument relating to any mitigating factor except in rebuttal of evidence offered by the defendant.

Insert 16-5:

1 (4) The court shall instruct the jury to consider the evidence of mitigating
2 circumstances and to determine whether the defendant should be sentenced to death
3 or to life imprisonment. The court shall further instruct the jury that if the jury does
4 not reach a unanimous decision, the court shall impose a sentence of life
5 imprisonment under which the defendant will serve at least 20 years in prison and
6 that the judge shall determine whether the defendant may be eligible for release to
7 extended supervision at some time after 20 years, and if so when, or whether the
8 defendant is not eligible for release to extended supervision. Upon the motion of any
9 party, the court shall further inform the jury if the defendant is ineligible for release
10 to extended supervision under s. 939.62 (2m) (c).

11 (5) The jury shall consider as a mitigating circumstance any aspect of the
12 defendant's character, background, or record or any of the circumstances of the
13 offense that the defendant offers as a basis for a sentence other than death.
14 Mitigating circumstances may include any of the following:

15 (a) The defendant has no significant history of prior criminal convictions
16 involving the use of violence against another person.

17 (b) The defendant was mentally retarded, as defined in sub. (7) (a), at the time
18 of the crime, or the defendant's mental capacity was impaired or his ability to
19 conform his conduct to the requirement of law was impaired, although not so
20 impaired as to constitute a defense to prosecution.

21 (c) The defendant was under duress or under the domination of another person,
22 although not such duress or domination as to constitute a defense to prosecution.

23 (d) The defendant was criminally liable for the present offense of murder
24 committed by another, but his participation in the offense was relatively minor,
25 although not so minor as to constitute a defense to prosecution.

1 (e) The murder was committed while the defendant was mentally or
2 emotionally disturbed or under the influence of alcohol or any drug, although not to
3 such an extent as to constitute a defense to prosecution.

4 (f) Any other circumstance concerning the crime, the defendant's state of mind
5 or condition at the time of the crime, or the defendant's character, background[✓] or
6 record that could be relevant to mitigation or punishment for the crime.

7 (6) (a) If the jury unanimously decides that the defendant should be sentenced
8 to death, the court shall impose a sentence of death and the jury shall state on the
9 record which, if any, mitigating circumstances the jury found. If the jury
10 unanimously decides that the defendant should be sentenced to life imprisonment,
11 or if the jury does not unanimously agree on a sentence, the court shall sentence the
12 defendant to life imprisonment as provided under s. 973.014[✓]. If the jury decides that
13 the defendant should be sentenced to life imprisonment, the jury may make a
14 recommendation as to when, if ever, the defendant should be eligible for release to
15 extended supervision. The jury's recommendation regarding eligibility for release
16 to extended supervision is not binding on the court.

17 (b) If the jury's decision is unanimous, the court shall read the jury's decision
18 to the jurors and ask the jurors collectively if they concur with the decision. Upon
19 the request of either party, the court shall ask each juror individually if he or she
20 agrees with the jury's decision. If any juror responds in the negative, the court shall
21 refuse to accept the decision and shall direct the jury to continue deliberating.

22 (c) If there is no jury, the court shall consider the evidence presented regarding
23 mitigation and either sentence the defendant to death or to life imprisonment as
24 provided under s. 973.014. If the court sentences the defendant to death, the court
25 shall state on the record which, if any, mitigating circumstances the court found.

1 (7) (a) In this subsection, "mentally retarded" means having significantly
2 subaverage general intellectual functioning that exists concurrently with deficits in
3 adaptive behavior which were manifested before the age of 18. ^{years}

4 (b) If the state is seeking a sentence of death and the defendant files a motion
5 showing cause to believe that the defendant is mentally retarded, the court shall hold
6 a hearing to determine whether the defendant is mentally retarded before
7 conducting the sentencing hearing. The judge shall conduct the hearing on mental
8 retardation without a jury. At the hearing on mental retardation, [✓]the defendant has
9 the burden to prove by a preponderance of the evidence that he or she is mentally
10 retarded.

11 (c) At the close of the hearing on mental retardation and before the court
12 renders a determination on the issue of mental retardation, the court shall conduct
13 the sentencing hearing. If the sentence imposed is other than death, the court [✓]will
14 not rule on the issue of mental retardation. If the defendant is sentenced to death,
15 the court shall issue a determination regarding mental retardation. If the court finds
16 that the defendant is mentally retarded, the court shall ^{9A}set aside the sentence of
17 death and sentence the defendant under s. 973.014. If the court finds that the
18 defendant is not mentally retarded, the sentence of death stands.

19 (d) The state may appeal a determination that a defendant is mentally
20 retarded.

21 (e) This subsection does not apply if the homicide for which the defendant is
22 being sentenced was committed while the defendant was incarcerated under a
23 criminal sentence.

24 (8) (a) In this subsection, [✓]"mental health expert" means a psychiatrist,
25 psychologist, or other person who has received training or education relating to, or

1 has experience relating to, the identification, diagnosis, treatment, or evaluation of
2 mental diseases, defects, or conditions.

3 (b) If either party intends to present evidence offered by a mental health expert
4 of a mental disease, defect, or condition at a sentencing hearing or a hearing on
5 mental retardation under this section, the party shall provide notice of the intent and
6 a summary of the expert's testimony. If the defendant provides notice of intent to
7 present expert mental health testimony, the state may request that the court order
8 the defendant to submit to an examination by a mental health expert designated by
9 the state.

10 (c) Counsel for the defendant and the state have the right to be present at an
11 examination ordered under par. (b). The state shall provide the defendant with a
12 transcript of the examination promptly after its conclusion. If the court finds that
13 the defendant refused to cooperate fully in an examination ordered under par. (b),
14 the court, upon the request of the state, shall instruct the jury that the defendant did
15 not submit to or cooperate fully in the examination.

16 (d) Statements made by the defendant during an examination ordered under
17 par. (b) are inadmissible as evidence in any criminal action or proceeding concerning
18 the defendant, except as evidence regarding the existence of a mitigating factor
19 under sub. (5) or on the issue mental retardation in a hearing under sub. (7).
20

Kmg

Senator Welch:

Crimes Covered by Terrorism Penalty Enhancer

The current Wisconsin terrorism penalty enhancer covers all felonies that are committed with an intent to terrorize and that: (1) result in bodily harm or death, 2) result in property damage greater than \$25,000, or 3) involve violence, force, or a threat of violence & force. The New York terrorism penalty enhancer identifies specific crimes for which the penalty may be enhanced if the crime is committed with intent to terrorize. The descriptors in the Wisconsin penalty enhancer generally cover the specific crimes identified in the New York penalty enhancer. However, the New York enhancer does cover the following crimes that are not covered by the Wisconsin enhancer:

1. (Possession of a dangerous weapon with intent to use it unlawfully against another.) The bill does not enhance the penalty for possession of a dangerous weapon. Nor does it permit enhancement of the penalty for the crime of threatening use of a weapon of mass destruction that is created by this bill (although a person could be convicted for both threatening use of a weapon of mass destruction and for making a terrorist threat, which is also a new crime proposed under this bill).

2. (Criminal tampering.) A person is guilty of criminal tampering in New York if, with intent to cause a substantial interruption or impairment of a service rendered to the public, he or she damages or tampers property of various public utilities or telephone service and causes a substantial interruption or impairment of services. This offense is covered under the current Wisconsin terrorism penalty enhancer if the damage costs more than \$25,000 to repair or replace, but not if the repair or replacement cost is less than \$25,000.

or more

Do you want to apply the terrorism penalty enhancer to either of these crimes or to any other crimes?

Penalty Enhancer

The current Wisconsin terrorism penalty enhancer allows the fine for a felony to be increased by up to \$50,000 and the term of imprisonment to be increased by up to 10 years, if the terrorism penalty enhancer is found to apply. The New York statutes

change the classification of a penalty to the next higher class, if the terrorism penalty enhancer applies. This bill maintains the current Wisconsin enhancer. For felonies in the lower classifications, the Wisconsin format provides a greater enhancer. For penalties in the higher classifications, the New York method provides a greater enhancer.

Inchoate Crimes

Some of the crimes created in this bill may be duplicative of other inchoate crimes. (Inchoate crimes include attempt, conspiracy, and solicitation.) For example a person who provides material resources for the commission of a terrorist act could potentially be convicted of the crime of support that is proposed by this bill, and of conspiracy. The bill does not address duplication. Rather, it leaves the resolution of double jeopardy issues for the courts.

Solicitation in Wisconsin of a Crime in another state

Courts in several states have held that the prohibition against soliciting a crime applies to solicitation of an act that will be committed in another state. (See *People v. Burt*, 45 Cal. 2d 311, 288 P.2d 503; *Miller v. State*, 430 So. 2d 611 (Fla. App. 1983); and *State v. Self*, 75 Pre. App. 230, 706 P. 2d 975.) It is unclear whether the Wisconsin solicitation ~~statute applies~~ to solicitation, in Wisconsin, of acts in other states. The bill therefore makes it clear that solicitation, in Wisconsin, of an act of terrorism, regardless of where the act is to take place, is punishable under the Wisconsin solicitation statute, but does not address solicitation of crimes that are not acts of terrorism.

statute
applies

apply

Death Penalty and Mental Retardation

The death penalty provisions in the bill are based on the New York death penalty. New York and this bill prohibit imposing a sentence of death on a person who is found to be "mentally retarded." The term "mentally retarded" is generally not used in Wisconsin statutes. However, states that have the death penalty and prohibit execution of people with mental deficiencies generally use the term "mentally retarded." Please let me know if you would like the bill to use different terminology.

"Serious Crimes" and "Violent Crimes"

Current law identifies certain crimes as "serious crimes" or "violent crimes" for various purposes such as enhancing penalties for criminal violations. This bill adds references to the crime of threatening to use weapons of mass destruction in sections where there are currently references to the crime of making bomb threats. The bill does not add references to any of the other new crimes.

Please contact me with any questions or redraft requests.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

From Robt. Seitz
in Zien's office

Community Protection Act Drafting Instructions:

- The Bill should be named the "Community Protection Act"
- Criminal provisions regarding terrorism as submitted by Senator Welch
- Concealed Weapons:
 - o Allowing concealed weapons to be carried by:
 - Retired Law enforcement (including local, state, federal and military police)
 - Active military, reservists and national guard members serving off duty or on duty with the permission of their command authority.
 - State law enforcement, including Troopers, Wardens, Correctional Officers and DOJ Officers.
 - Licensed private security.

The intent is to allow any of the above individuals who have received weapons training as a mandatory part of their employment to receive a license upon passing a standard federal and state criminal background check.

- o Time requirements on issuance contained LRB 1086 by Zien and Gunderson should be included.
- o Application and background checks would be through county sheriff.
- o Sheriff would be required to certify the individual upon receiving proof that he or she meets the above requirements. The sheriff would certify to the DMV that a license could be issued. DMV would issue a photo ID designed and issued under the requirements of LRB 1086.
- o DOJ would be required to maintain a computer list of the individuals as stipulated in LRB 1086.
- o Individuals could be charged only for the actual cost of the standard background check.
- o Applicants would be required to carry the license whenever they carry the concealed weapon.
- o Carry would be allowed wherever local law enforcement officers are allowed to carry.

Please give me a call regarding any questions at 6-7511.

167.31

e.g., amend s. 941.235(2)
to add people w/ concealed
carry permit

For LRB - 3835

Add language to turn in w/in 30 days =>
Class C misdemeanor

00783

Dsida, Michael

From: Seitz, Robert
Sent: Thursday, October 25, 2001 3:16 PM
To: Dsida, Michael
Cc: Newhouse, Chris
Subject: RE: Eligibility questions

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, October 25, 2001 11:28 AM
To: Seitz, Robert
Subject: Eligibility questions

Troopers and wardens (I assume you are talking about DNR wardens, not DOC wardens) already have the authority to carry concealed weapons, since they are "peace officers" under s. 939.22 (22). Do you still want to require them to get a DOT-issued card?

[Seitz, Robert] My understanding is that they are not authorized by their supervisor(s) to carry concealed off duty. If it is easily done, we would like to allow any law enforcement authorized to carry off duty to continue in that practice without the card. If an officer is not authorized by his supervisor, she/he can still carry if they get the card.

Do you want the bill to apply to out-of-state law enforcement officers (active or retired)? For example, what if an Illinois police officer has retired to Wisconsin? Similarly, does this apply to a member of national guard unit other than Wisconsin's?

[Seitz, Robert] Yes. Yes.

You refer to correctional officers. Do you also want to cover guards at county jails?

[Seitz, Robert] Yes, if firearms training is required for their job.

When you refer to DOJ officers, you are referring to DOJ investigators, right?

[Seitz, Robert] Yes.

I will probably have additional technical questions like these as I continue drafting.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Seitz, Robert
Sent: Thursday, October 25, 2001 4:50 PM
To: Dsida, Michael
Cc: Newhouse, Chris
Subject: RE: concealed carry

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, October 25, 2001 4:13 PM
To: Seitz, Robert
Subject: concealed carry

1. Here's another way to address the question we just talked about. You could prohibit a local government from imposing any sanction on an officer who carries a concealed weapon. (You could have that prohibition apply to all officers or you could have it apply only if the officer has obtained a license.) What do you think? **[Seitz, Robert]** **[Seitz, Robert]** OK, unless it is in relation to discipline.
2. Do you want your bill to include s. 175.50 (5) (f), (g), (h), or (i) from LRB-1086? **[Seitz, Robert]** (h) and (i)
3. If an individual is a resident of Wisconsin, must he or she apply with the sheriff of the county in which he or she resides? **[Seitz, Robert]** No Where would a non-resident apply? **[Seitz, Robert]** Any Sheriff
4. LRB-1086 does not require background checks for law enforcement officers, correctional officers, probation/parole/extended supervision officers, and people certified as jail or secure detention officers. Do you want to require background checks for them in your bill? (By the way, if there are new categories of people whom you want the bill to cover (like the categories of people I just listed), let me know.) **[Seitz, Robert]** Background checks only if they are not actively serving. Anyone who is trained to use a firearm as a requirement of their job should be eligible. I think that applies to all above.
5. For how long will the license be valid? (If it is for a fixed period of time, I will include renewal provisions.) **[Seitz, Robert]** Permanently

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Clar

Jailer training - weapon

Some trained

Dsida, Michael

From: Seitz, Robert
Sent: Friday, October 26, 2001 12:20 PM
To: Dsida, Michael
Subject: RE: concealed carry

Yes, they can go straight to the sheriff.

-----Original Message-----

From: Dsida, Michael
Sent: Friday, October 26, 2001 9:52 AM
To: Seitz, Robert
Subject: RE: concealed carry

Follow up to previous message: Can the person go right to DOT for reissuance, or do they go to the sheriff first and have the sheriff authorize DOT to reissue it?

(FYI - I am including in the draft a requirement that DOJ promulgate rules regarding proof of identity at DOT -- to ensure that the person who goes to DOT is the same person who applies with the sheriff.)

Dsida, Michael

From: Seitz, Robert
Sent: Thursday, October 25, 2001 4:50 PM
To: Dsida, Michael
Cc: Newhouse, Chris
Subject: RE: concealed carry

-----Original Message-----

From: Dsida, Michael
Sent: Thursday, October 25, 2001 4:13 PM
To: Seitz, Robert
Subject: concealed carry

1. Here's another way to address the question we just talked about. You could prohibit a local government from imposing any sanction on an officer who carries a concealed weapon. (You could have that prohibition apply to all officers or you could have it apply only if the officer has obtained a license.) What do you think? **[Seitz, Robert]**
[Seitz, Robert] OK, unless it is in relation to discipline.
2. Do you want your bill to include s. 175.50 (5) (f), (g), (h), or (i) from LRB-1086?
[Seitz, Robert] (h) and (i)
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5. For how long will the license be valid? (If it is for a fixed period of time, I will include renewal provisions.) **[Seitz, Robert]** Permanently

Mike Dsida

Dsida, Michael

From: Seitz, Robert
Sent: Monday, October 29, 2001 8:57 AM
To: Dsida, Michael
Cc: Newhouse, Chris
Subject: RE: concealed carry -- this may be the last batch of questions

Mike,

I appreciate your attention to detail. However, as you are aware, the rest of this bill has been drafted for some time now and our opportunity to give this any legislative consideration this Fall is almost over after over a month of drafting. We have committee chairs asking where our bill is. We need this bill!

-----Original Message-----

From: Dsida, Michael
Sent: Saturday, October 27, 2001 4:28 PM
To: Seitz, Robert
Subject: RE: concealed carry -- this may be the last batch of questions

1. Do you want either DOT or DOJ (or both) to maintain a copy of the photograph (digitally or otherwise) that is on the license?

[Seitz, Robert] I don't care if they keep it or not.

2. I have already asked questions about particular positions in Wisconsin and elsewhere (for example, out-of-state law enforcement officers or Wisconsin probation and parole officers), but I should have asked this general question: is a person eligible for a license if he or she is required to get weapons training as a condition of employment, regardless of what his or her job is and regardless of for whom -- or the state in which -- he or she works? (I am thinking of people like other states' probation or parole officers and private prison guards).

[Seitz, Robert] yes

3. I have included provisions to require DOJ to promulgate rules regarding verification of a person's employment status and weapons training by the sheriff and verification of a person's identity by DOT (to protect against someone other than the person who applied in the sheriff's office from obtaining the license document). Promulgation of rules, however, often takes 12 months or more, so you may want to consider requiring the expedited adoption of rules.

Section 227.24 (1) permits an agency to bypass the usual notice, hearing, and publication requirements of the rule-making procedures if preservation of the public peace, health, safety, or welfare necessitates putting a rule into effect before the time it would take effect if the agency complied with those procedures. Because under s. 227.24 (1) (c), emergency rules must expire in 150 days, unless extended for not more than 120 days under s. 227.24 (2) (a), and because expedited procedures are used in their promulgation which may deny the agency and the public the benefits of the permanent rule-making process, emergency rules are generally used for temporary purposes only. Alternatively, you can require DOJ to promulgate rules by exempting it from making an emergency finding before promulgating the emergency rule.

[Seitz, Robert] We need emergency authority and a VERY short timeline for rules.

4. Does the "permission of their command authority" requirement apply to inactive members of the reserve or national guard?

[Seitz, Robert] No, they are not allowed by statute to carry off duty.

5. Does this language work regarding the off-duty police officers?

Neither a state agency nor a political subdivision of the state may deny employment to a licensee or discipline or discharge a licensee employed by the agency or the political subdivision based on the licensee's status as a licensee or the licensee's possession of a concealed weapon consistent with the requirements of this section.

[Seitz, Robert] yes

Mike Dsida
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